

Memorandum



Date: October 18, 2005
To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

Agenda Item No. 10(B)(1)(A)

From: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "Burgess", written over the printed name of George M. Burgess.

Subject: Resolution authorizing the County's direct purchase of building materials, supplies and equipment for the construction of the South Miami-Dade Cultural Center.

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing the County's direct purchase of up to \$11.5 million of building materials, supplies and equipment for the construction of the South Miami-Dade Cultural Center; waiving formal bid procedures and provisions of Section 4.03 (D) of the Home Rule Charter and Administrative Order 3-38 in connection of such purchases.

BACKGROUND

Under resolution R-880-05, a contract for the construction of the South Miami-Dade Cultural Center (Project number CUA 9722 SMDCC) was approved by the Board on July 7, 2005, and awarded to The Tower Group, Inc. for a total contract amount of \$38,412,280. The contract includes the construction and equipping of a 71,500 square foot Theater Building, a 7,500 square foot Activities Building, and corresponding parking and site improvements on 6.39 acres of land at S.W. 211 Street adjacent to the South Miami-Dade Government Center.

As part of the bid solicitation package, bidders were instructed to include Florida State sales tax and other applicable taxes in their bids for materials and equipment. In an effort to save money and take advantage of its sales tax exemption status, Miami-Dade County reserved the right, but not the duty, to make owner direct purchases of building materials, supplies and equipment to be used in the project.

The Department of Cultural Affairs has been pursuing the approval from the State of Florida Department of Revenue to implement a Direct Purchase Program for the South Miami-Dade Cultural Center, which will provide savings of the sales tax fees on items purchased by the County for the construction of the Center. Direct county purchases through this Program are anticipated to total up to \$11.5 million, with a savings goal between \$400,000 - \$800,000. Savings realized through the implementation of this Program will be added to the owner controlled project contingency. Provisions for the implementation of the Direct Purchase Program and a representative list of items that are candidates for procurement through the Program are included in Specification Section 00810 of the Project Manual and herein included as Attachment A.

In order for the County to take advantage of these sales tax savings, it is respectfully requested that the Board waive formal bid provisions of Section 4.03(D) of the Home Rule Charter and the competitive selection requirements of Administrative Order 3-38 in connection with such purchases.

A handwritten signature in black ink, appearing to read "Alex Muñoz", written over the printed name of Alex Muñoz.

Alex Muñoz
Assistant County Manager

ATTACHMENT A

South Miami-Dade Cultural Center
Cultural Affairs Project No. 9722
ARQ Project No. 9944

Bid/Permit Issue
July 6, 2004

SECTION 00810 Revised 03.09.05

MODIFICATIONS TO GENERAL CONDITIONS OWNER PURCHASES

PART 1 GENERAL

1.01 REQUIREMENTS INCLUDED

- A. The Owner, being exempt from Sales Tax, may elect to directly purchase certain items on this Project for the purpose of realizing a Sales Tax savings. The Contractor shall remain fully responsible for choosing vendors, determining quantities, coordinating delivery, scheduling purchases and deliveries, unloading the items, on-site storage, and all other normal practices for a construction project. If this option is elected, the Owner will execute a purchase order with the vendors to purchase the items directly, without Sales Tax, for items determined by the Contractor and Owner to be suitable for purchase under this program. A general list of items that may be directly purchased via the method outlined herein is included below. Items may be added to or deducted from this list. A minimum purchase threshold of \$10,000 will be maintained for all purchases to be made under this system. The Contractor shall carry the cost of a person or persons necessary to coordinate this purchasing process with the Owner as part of this base bid.

1.02 BID REQUIREMENT

- A. The Contractor shall carry and shall direct his Sub-contractors to carry applicable Florida Sales Tax on all supplies, material and equipment to be purchased as part of the work in accordance with applicable State Laws.

PART 2 PRODUCTS

2.01 PROPOSED PURCHASES BEING CONSIDERED BY THE OWNER

- A. The Owner is considering the items listed below for tax-exempt direct purchase Per the State of Florida, Department of Revenue, Technical Assistance Advisement Letter, as requested from the state

1. Reinforcing Steel
2. Precast Concrete
3. Stone (Exterior and interior)
4. Structural Steel
5. Metal Deck
6. Roofing Materials
7. Hollow Metal Doors and Frames
8. Wood Doors
9. Toilet Accessories
10. Food Service Equipment (Concessions Kiosks)
11. Theater Seating
12. Theater Equipment
13. Elevators and Lifts
14. Fire Pump/
15. Windows
16. Cooling Tower
17. Pumps
18. Air Handling Units
19. Switchgear & Transformers
20. Stage Lighting Controls
21. Sound and Communications Equipment
22. Motor Starters

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23. Emergency Generators
24. Irrigation equipment and piping
25. Site Lighting
26. Site accessories
27. Orchestra Shell
28. Asphalt/Concrete Paving
29. Concrete Pavers
30. Sanitary Sewage System
31. Storm Drainage Wells
32. Landscaping
33. Concrete Material
34. Concrete Unit Masonry
35. Expansion Joint Cover Assemblies
36. Architectural Woodwork
37. Joint Sealant and Acoustical Treatment
38. Building Insulation and Air Barrier
39. Cementitious Fireproofing
40. Finish Hardware
41. Coiling Doors and Grilles
42. Powered Swing Doors
43. Curtain Wall Glazing package
44. Gypsum Board System
45. Tile & Grout
46. Epoxy
47. Metal Wall and Ceiling Panels
48. Acoustical Wall Treatment
49. Wood Flooring
50. Resilient Flooring and Accessories
51. Carpet
52. Fabrics and Wall Coverings
53. Toilet Partitions
54. Metal Wall Louvers, Grille and Screens
55. Sign Package, Marquee Sign and Corner Stone
56. Furniture, Fixture and Equipment Package
57. Storm / Flood Protection at Windows and Doors
58. Fall Arrest System
59. Demountable Platforms & Rails
60. Stage Lifts
61. Curtain Wall Framing Package

PART 3 EXECUTION

3.01 PROCEDURES

- A. A copy of the standard Miami-Dade County Purchase Order is included herein for reference. The Contractor shall execute or shall direct his Sub-contractors to execute a standard Purchase Order Requisition Form (see sample copy), to specifically identify the materials, which the Owner will purchase directly. Any specific terms negotiated with the vendor i.e. payment terms, warranties, retainage, etc., shall be noted on this form. After receipt of the Purchase Requisition Form, the Owner shall prepare its Purchase Order for the items that the Owner chooses to purchase directly. Pursuant to the Purchase Order, the vendor shall provide the required quantity of materials at the price established in the vendor's quote to the Sub-contractor or Contractor, less the Sales Tax associated with such price. Promptly upon receipt of the Purchase Order, the Contractor shall verify the Terms and Conditions of the Purchase

ATTACHMENT A

Order, prior to its issuance to the Vendor. The Purchase Order shall require the Vendor to provide the required shipping and handling insurance. It shall also require the delivery of the items purchased on the date specified by the Contractor or Sub-contractor in the Purchase Order Requisition Form, and shall indicate F.O.B. job site. All vendors will be required to comply with the terms of the Purchase Order, including having a valid vendor number. In addition, all vendors must comply with the requirements to become a registered vendor as outlined in the County's Department of Procurement Management's Business Entity Registration Application and all applicable legislation, including the relevant affidavits. Refer to the Bid documents for complete instructions.

- B. Simultaneously with each purchase, a deduct Change Order will be executed with the Contractor, for the full amount of the purchase, plus the amount of sales tax that would have been applicable to the purchase and the actual cost of the Contractor's Bond for the Sales Tax.
- C. The Contractor shall be fully responsible and/or shall direct the applicable Sub-contractors to be fully responsible for all matters related to the receipt of the materials furnished by the Owner under this program, including but not limited to, verifying correct quantities, coordinating purchases, providing and obtaining all warranties required by the Contract Documents, inspection and acceptance of the goods at the time of delivery and any negligence by the Contractor or its agents which results in loss or damage to equipment or materials following acceptance by the Owner. The Contractor shall coordinate and shall direct his Sub-contractor (if applicable) to coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Contractor for the particular materials furnished. The Contractor shall unload the materials and provide storage and protection of the goods through installation. The Contractor agrees to indemnify and hold harmless the Owner from any and all claims of whatever nature resulting from non-payment to suppliers arising from the actions or directions of the Contractor. As Owner-purchased materials are delivered to the job site, the Contractor shall visually inspect all shipments and review the vendor's invoice for material delivered. The Contractor shall furnish to the Owner documentation such as a delivery ticket to identify the Purchase Order against which the purchase is made. The Owner will assign purchasing staff to verify and audit the accuracy of all Direct Purchase documents.
 - 1. The Contractor shall insure and/or direct the applicable Sub-contractors, suppliers and/or vendors to directly invoice the Owner for payment on the items that the Owner chooses to purchase directly.
- D. The Contractor shall insure that the directly purchased materials conform to the Specifications and Drawings, determine prior to incorporation into the work whether they are patently defective, and whether the materials are identical to the materials ordered and match the description on the Bill of Lading. If the Contractor or a Subcontractor discovers defective or non-conformities in the Owner Purchased material upon such visual inspection, the Contractor shall not utilize or shall direct his Sub-contractor to not utilize such non-conforming or defective materials in the Work and instead shall promptly notify the Vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Contractor shall direct his Sub-contractor to notify the Owner, through the Contractor, of such occurrence. If the Sub-contractor fails to perform such inspection and otherwise incorporates Owner Purchased materials, the conditions of which it either knew or should have known by performance of an inspection, the Contractor shall be responsible for all damages to the Owner resulting from the Subcontractor's incorporation of such materials into the Project, including liquidated or delay damages. In the event that materials furnished are found to be defective or non-conforming, the Contractor shall direct the Subcontractor to promptly take action to remedy the defect or non-conformance so as not to delay the work.
- E. The Contractor shall maintain records of all Owner Purchased materials it incorporates into the Work from the stock of the Owner Materials in its possession.
- F. The Contractor shall be responsible for obtaining and managing all warranties and guarantees for all materials and products as required by the Contract Documents. All repairs, maintenance or damage repair calls shall be forwarded to the Contractor for resolution with the appropriate supplier or vendor.
- G. Notwithstanding the transfer of Owner Purchased materials by the Owner to the Contractor's possession, the Owner shall retain title to any and all Owner Purchased materials.

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Bid/Permit Issue
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- H. The transfer of possession of Owner Purchased materials from the Owner to the Contractor shall constitute a bailment of mutual benefit of the Owner and the Contractor. The Owner shall be considered the bailer and the Contractor the bailee of the Owner Purchased material. Owner Purchased materials shall be considered returned to the Owner for purpose of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project. Bailee shall have the duty to safeguard, store and protect all Owner Purchased materials.
- I. The Contractor shall purchase and maintain insurance pursuant to the requirements set forth in the Owner and Contractor Agreement which shall be sufficient to protect against any loss or damage to Owner Purchased equipment, materials, or supplies. Such insurance shall cover the value of any Owner Purchased materials not yet incorporated in the Project from the time of the Owner first takes title. Such insurance shall name the Owner as an additional insured party.
- J. On a monthly basis, the Contractor shall be required to review invoices submitted by all suppliers of Owner Purchased materials delivered to the Project site during that month and whether it concurs or objects to Owner issuance of payment to the suppliers, based upon Contractor's records of materials delivered to the site and defects in such materials.
- K. In order to arrange for prompt payment to the supplier, the Contractor shall provide to the Owner, a list indicating the acceptance of the goods or materials in accordance with the established monthly payment request schedule. The list shall include a copy of the applicable purchase order; invoices, delivery tickets, written acceptance of delivered items and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the appropriate documentation, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. This check will be released, delivered and remitted directly to the supplier. The Contractor agrees to assist the Owner to immediately obtain partial or final release of lien waivers as appropriate.
- L. The provisions of the Community Small Business Enterprise (CSBE) and the Community Workforce Program goals as included in Section 00823 of the Project Manual shall be applicable to all of the items purchased through this process. The CSBE participation goals apply to the complete contract award amount, which includes the Owner Purchases as outlined in this Section. Purchases executed by the Owner as outlined in this Section, which includes the participation of CSBEs, shall be reported as contributing to the participation goals.
- M. At the end of the Project, any refund for surplus materials returned to suppliers plus applicable sales tax savings amount shall be credited to the cost of the Work with an additive Change Order to the Owner's contingency. Salvage materials shall be the property of the Owner and stored or removed from the site by the Contractor at the Owner's direction.

END OF SECTION



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: October 18, 2005

FROM:


Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 10(B)(1)(A)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 10(B)(1)(A)
10-18-05

RESOLUTION NO. _____

RESOLUTION PROVIDING FOR THE COUNTY'S DIRECT PURCHASE OF BUILDING MATERIALS, SUPPLIES AND EQUIPMENT FOR THE CONSTRUCTION OF THE SOUTH MIAMI-DADE CULTURAL CENTER, WAIVING FORMAL BID PROCEDURES AND PROVISIONS OF SECTION 4.03(D) OF THE MIAMI-DADE COUNTY HOME RULE CHARTER, AND ADMINISTRATIVE ORDER 3-38 IN CONNECTION WITH SUCH PURCHASES

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, the Provisions for the implementation of the Direct Purchase Program and a representative list of items that are candidates for procurement through the Program are included in Specification Section 00810 of the Project Manual and herein included as Attachment A to the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, in an effort to save money and take advantage of its sales tax exemption status, the County seeks to utilize a Direct Purchase Program for the procurement of up to \$11.5 million of building materials, supplies, and equipment for the construction of the South Miami-Dade Cultural Center; and

WHEREAS, for the purpose of the implementation of the Direct Purchase Program, the County Manager is hereby authorized to execute deductive change orders without further Board approval,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Board finds that it is in the best interest of Miami-Dade County to waive formal bid provisions of Section 4.03(D) of

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the Home Rule Charter and the requirements of Administrative Order 3-38 in connection with the purchase by the County of building materials, supplies and equipment for the South Miami-Dade Cultural Center project.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Dennis C. Moss, Vice-Chairman	
Bruno A. Barreiro	Dr. Barbara Carey-Shuler
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorrian D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 18th day of October, 2005. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

HBI

Hugo Benitez